40 CFR Part 749

[OPPTS-61018A; FRL-4867-3]

RIN 2070-AC57

Prohibition of Hexavalent Chromium-Based Water Treatment Chemicals in Comfort Cooling Towers; Amendment To Limit the Scope of the Export Notification Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule amends 40 CFR part 749, subpart D, which prohibits, under section 6 of the Toxic Substances Control Act (TSCA), the use of hexavalent chromium-based water treatment chemicals in comfort cooling towers and the distribution of such chemicals in commerce for use in comfort cooling towers. Today's action amends 40 CFR 749.68 to clarify that only hexavalent chromium chemicals that can be used for water treatment are the subjects of this regulation, not other hexavalent chromium chemicals. This amendment limits the scope of export notifications currently required for hexavalent chromium chemicals under TSCA section 12(b), the TSCA Export Notification Rule (40 CFR part 707), and §749.68. No changes to the prohibitions or labeling requirements of the hexavalent chromium rule are intended by this amendment. As amended, §749.68 does not trigger the section 12(b) export notification requirements for exports of hexavalent chromium products such as certain paints, dyes, pigments, coatings, electroplating and conversion coating products, and other products containing hexavalent chromium that cannot be used to treat water.

DATES: This rule shall become effective on September 19, 1994. In accordance with 40 CFR 23.5, this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern daylight time (or standard time) on September 2, 1994.

FOR FURTHER INFORMATION CONTACT: Geraldine Gardner, Office of Enforcement and Compliance Assurance (2245), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202-260-8858.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 30, 1993 (58 FR 63148), EPA proposed an amendment to 40 CFR part 749, subpart D, which prohibits the use of hexavalent chromium (Cr^{+6})-based water treatment chemicals in comfort cooling towers (CCTs) and the distribution of such chemicals in commerce for use in CCTs. The regulatory text of today's amendment is identical to the regulatory text of the proposed amendment. Comments received on the proposed amendment are addressed in Unit V of this preamble. Today's amendment modifies 40 CFR 749.68 to clarify that only Cr^{+6} chemicals that can be used for water treatment are the subjects of the regulation, not other Cr^{+6} chemicals. This change limits the scope of TSCA section 12(b) export notifications currently required for Cr^{+6} chemicals.

I. Authority

This amendment is being promulgated pursuant to TSCA sections 6 (15 U.S.C. 2605) and 12(b) (15 U.S.C. 2611(b)). Section 6 of TSCA authorizes EPA to impose regulatory controls if EPA finds that there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture presents or will present an unreasonable risk of injury to human health or the environment. Under this authority, EPA issued a final rule in the **Federal Register** of January 3, 1990 (55 FR 222), that prohibits the use of Cr^{+6}-based water treatment chemicals in CCTs and the distribution in commerce of Cr^{+6}-based water treatment chemicals for use in CCTs (40 part CFR 749, subpart D). The rule also requires persons who distribute in commerce Cr^{+6}-based water treatment chemicals to label the containers of the chemicals.

Section 12(b) of TSCA requires that any person who exports or intends to export to a foreign country a chemical substance or mixture for which: (1) The submission of data is required under TSCA section 4 (15 U.S.C. 2603) or 5(b) (15 U.S.C. 2604(b)); (2) an order has been issued under section 5; (3) a rule has been proposed or promulgated under section 5 or 6 (15 U.S.C. 2605); or (4) relief has been granted under section 5 or 7 (15 U.S.C. 2606) to notify the Administrator of EPA of such exportation or intent to export. Upon receipt of such notification, section

12(b) of TSCA requires EPA to furnish the government of the importing country with: notice of the availability of data received pursuant to action under section 4 or 5(b), or notice of such rule, order, action, or relief under section 5, 6, or 7. EPA promulgated a rule setting forth the export notification requirements of TSCA section 12(b) under 40 CFR part 707, subpart D. EPA amended the export notification rule to limit notifications triggered by TSCA section 4 actions on July 27, 1993 (58 FR 40238).

II. Background

Because the Cr^{+6} rule was promulgated under TSCA section 6, export notification requirements under section 12(b) are triggered. Currently, all Cr^{+6} chemicals are subject to section 12(b) because the term "Cr^{+6} chemicals" is presently defined in § 749.68(d)(10) as "any combination of chemical substances containing hexavalent chromium and includes hexavalent chromium-based water treatment chemicals." Thus, for example, the export of paint containing a Cr^{+6} chemical that cannot be used for water treatment would currently trigger the section 12(b) notification requirements.

In the preamble to the final Cr^{+6} rule, EPA stated that pursuant to TSCA section 12(b) and 40 CFR part 707, subpart D, persons who export or intend to export Cr^{+6} chemicals are required to notify EPA of those activities. EPA indicated that export notification would be required for all Cr^{+6} exports "because the substance subject to the rule is Cr^{+6}" and that it did not believe that the requirement should be narrowed, as a practical matter, because of the difficulty in determining the end use of the Cr^{+6} at the time of export. EPA also anticipated that the burden of the notification requirements that would be triggered by the export of Cr^{+6} for uses not regulated by the rule would be minimal.

After promulgation of the final Cr^{+6} rule, the Chrome Coalition filed a Petition for Review with the United States Court of Appeals, District of Columbia Circuit dated April 17, 1990 (*Chrome Coalition v. U.S. Environmental Protection Agency*, No. 90–1138). In the petition, the Chrome Coalition argued that because EPA failed to set forth its interpretation of TSCA section 12(b) in the proposed rule, the public was unable to comment on that interpretation. Additionally, they argued that EPA's interpretation of section 12(b) is too broad in the context of the Cr^{+6} rule, and imposes an unnecessary burden on any business that exports products containing Cr^{+6}, even when the products cannot be used in water treatment. As a part of the settlement reached with the Chrome Coalition on December 15, 1992, EPA agreed to promulgate a rule that addressed the concerns raised by the Coalition. The Settlement Agreement was filed with the United States Court of Appeals, District of Columbia Circuit on January 7, 1993.

In light of the Chrome Coalition's Petition, EPA reevaluated the need to broadly require export notification for all Cr^{+6} chemicals and proposed to modify the rule to clarify it on November 30, 1993 (58 FR 63148).

III. Summary of this Final Rule

EPA is amending the Cr^{+6} rule solely to clarify the scope of coverage of the rule, thereby limiting the scope of the required section 12(b) notifications. This rule will require notification under 40 CFR part 707, subpart D, for the export or intended export of Cr^{+6} chemicals that can be used for water treatment. EPA is listing in § 749.68 certain specific Cr^{+6} chemicals that the Agency believes can be used to treat water. This is not meant to be a complete listing of all Cr^{+6} chemicals that can be used to treat water, but rather a listing of examples. The export of any Cr^{+6} chemicals alone, or in combination with other chemical substances when the mixture can be used to treat water cooling systems, will trigger the TSCA section 12(b) export notification requirements.

Under existing language of the Cr^{+6} rule, TSCA section 12(b) export notification is required for all Cr^{+6} compounds, if they are exported alone, or in combination with other substances, even if the exported product cannot be used to treat water. With today's amendment, exporters of hexavalent chromium products such as paints, dyes, pigments, electroplating and conversion coating products, and other substances containing Cr^{+6} that cannot be used to treat water will not need to report the export to EPA under TSCA section 12(b). To accomplish this, EPA is amending the subject of the Cr^{+6} rule, certain definitions, and other appropriate provisions, as discussed below.

IV. Discussion of this Final Rule

Exports of certain Cr^{+6} chemicals (e.g., in such products as paints, dyes, pigments, electroplating and conversion coating products) may now be triggering TSCA section 12(b) export notifications in more cases than are necessary to reasonably carry out the purposes of TSCA section 12(b) and the section 6 Cr^{+6} rule. EPA believes the current burden associated with exporters providing notification for exports of Cr^{+6} chemicals that cannot be used for water treatment to be substantial, without providing any appreciable reduction in the risk addressed in the Cr^{+6} rule. In addition, the benefits to countries receiving these notifications are thought to be minimal. This amendment modifies § 749.68 to clarify that only Cr^{+6} chemicals that can be used to treat water are the subjects of the Cr^{+6} rule. Because the amended regulation will address the risk concerns identified as the basis for the existing Cr^{+6} rule, but at a lower cost, EPA finds that the amended rule will continue to protect human health and the environment against unreasonable risk of injury. Moreover, this change, EPA believes, will provide to importing countries information more reflective of EPA's concerns and will further Congress' intent, pursuant to TSCA section 2(c) (15 U.S.C. 2601 (c)) that EPA administer TSCA "in a reasonable and prudent manner."

This change is supported by the TSCA section 6 Cr^{+6} rulemaking effort. The supporting documentation used by EPA to promulgate the Cr^{+6} rule focused on data regarding Cr^{+6} emissions from CCTs (55 FR 222 at 224). A background document, "Chromium Emissions from Comfort Cooling Towers - Background Information for Proposed Standards" (EPA-450/3-87-010a), March 1, 1988 (OPTS 61012) described EPA's regulatory alternatives and expected impacts. The information-gathering, analysis, and rulemaking were used solely to support a TSCA section 6 determination regarding Cr^{+6}-based water treatment chemicals and not all possible Cr^{+6} mixtures and products. Therefore, EPA believes that this amendment is consistent with the originally intended scope and coverage of the TSCA section 6 regulations.

The revised regulatory language clarifies that the chemicals subject to the rule are any Cr^{+6} chemicals that can be used to treat water, either alone or in combination with other chemicals, where the mixture can be used to treat water. As stated above, the intended effect of this change is to reduce the scope of the TSCA section 12(b) export notifications that are triggered by § 749.68.

Currently, the section heading of § 749.68 reads "Hexavalent chromium chemicals in comfort cooling towers." EPA believes that a more appropriate focus and heading for the rule is "Hexavalent chromium-based water treatment chemicals in cooling systems," and is therefore implementing

this change. Also, because the term "hexavalent chromium chemicals" in the current § 749.68(d)(10) will no longer be used, the definition is dropped.

As discussed above, the TSCA section 12(b) export notification requirements are triggered by the export of certain chemical substances or mixtures that are the subjects of certain actions under TSCA, including Cr^{+6} because of the section 6 Cr^{+6} rule. Currently, § 749.68(a) states:

(a) *Chemical substance subject to this section.* Hexavalent chromium, usually in the form of sodium dichromate (CAS No. 10588–01–9), is subject to this section.

Today, § 749.68(a) is amended to state:

(a) *Chemicals subject to this section.* Hexavalent chromium-based water treatment chemicals that contain hexavalent chromium, usually in the form of sodium dichromate (CAS No. 10588–01–9), are subject to this section. Other examples of hexavalent chromium compounds that can be used to treat water are: Chromic acid (CAS No. 7738–94–5), chromium trioxide (CAS No. 1333–83–0), dichromic acid (CAS No. 13530–68–2), potassium chromate (CAS No. 7789–00–6), potassium dichromate (CAS No. 7778–50–9), sodium chromate (CAS No. 7775–11–3), zinc chromate (CAS No. 13530–65–9), zinc chromate hydroxide (CAS No. 153936–94–6), zinc dichromate (CAS No. 14018–95–2), and zinc potassium chromate (CAS No. 11103–86–9).

By instituting this amendment in conjunction with the other changes discussed herein, especially those at § 749.68(d)(11) (see below), EPA intends that only Cr^{+6} compounds which can be used to treat water, either alone or in combination with other chemicals, where the mixture can be used to treat water, would be subject to the rule and thus the section 12(b) export notification requirements.

Related to this change, EPA is amending certain language in § 749.68(b), entitled "Purpose," and § 749.68(c), entitled "Applicability," to reflect the changed focus of the rule from Cr^{+6} to Cr^{+6}-based water treatment chemicals. Refer to § 749.68(b) and (c) of the regulatory text for the revised language.

EPA is also adding a chemical definition of Cr^{+6} in § 749.68(d)(10) to clarify the revised subject of the rule. The definition of Cr^{+6} is now "the oxidation state of chromium with an oxidation number of +6; a coordination number of 4 and tetrahedral geometry."

Another key change is a revised definition of "hexavalent chromium-based water treatment chemicals." The current definition in § 749.68(d)(11) states that "hexavalent chromium-based water treatment chemicals means any hexavalent chromium, alone or in combination with other water treatment chemicals, *used* to treat water." (emphasis added). The amended definition states that "hexavalent chromium-based water treatment chemicals means any chemical containing hexavalent chromium which can be used to treat water, either alone or in combination with other chemicals, where the mixture can be *used* to treat water." (emphasis added). This change is intended to require export notification for the export of chemicals that *can be used* to treat water, whether or not they are actually used to treat water. EPA believes that exporters will not always know the actual end use of the Cr^{+6} product. However, EPA believes that exporters are likely to know potential end uses or how Cr^{+6} can be used. Additionally, to help exporters identify which Cr^{+6} compounds can be used, either alone, or in combination with other chemicals to treat water, the Agency is listing examples of such compounds. This change is not intended to have any effect on the current labeling requirements or the prohibitions of the Cr^{+6} rule.

In order that the labeling requirements will not be affected by the changes being made today, EPA is changing the language of § 749.68(g). Currently, the labeling requirement at § 749.68(g) states:

Labeling. (1) Each person who distributes in commerce hexavalent chromium-based water treatment chemicals after February 20, 1990, shall affix a label. . .

As the current definition of "hexavalent chromium-based water treatment chemicals" in § 749.68(d)(11) is "any hexavalent chromium, alone or in combination with other water treatment chemicals, used to treat water," (emphasis added) labeling is required only for hexavalent chromium-based water treatment chemicals used to treat water. As stated above, the new definition of "hexavalent chromium-based water treatment chemicals" in § 749.68(d)(11) is "any hexavalent chromium which can be used to treat water. . ." (emphasis added). Without changing § 749.68(g), this new definition would have the effect of expanding the labeling requirements to require labeling of any hexavalent chromium, either alone or in combination with other chemicals, that can be used to treat water, where the mixture can be used to treat water. However, as the intent of this amendment is not to change the scope of the labeling requirements, the phrase "for use in cooling systems" is being added to § 749.68(g). This section now reads:

(g) *Labeling.* (1) Each person who distributes in commerce hexavalent chromium-based water treatment chemicals for use in cooling systems after February 20, 1990, shall affix a label. . .

EPA believes this change, along with the other modifications, will have the effect of maintaining the current labeling requirements.

All of the changes are meant to reduce the scope of TSCA section 12(b) export notifications without affecting the prohibitions and labeling requirements in the current rule. With today's amendment, EPA intends that exporters of paints, dyes, pigments, electroplating and conversion coating products, and other products containing Cr^{+6} that cannot be used to treat water will not report the export to EPA under TSCA section 12(b). To accomplish this, EPA is amending certain definitions and other appropriate provisions of the Cr^{+6} rule as discussed above. EPA believes that today's rule will reduce the burden on the regulated community in cases where export notification provides little or no benefit to importing countries.

Today's rule is consistent with other Agency efforts to improve the utility of these notices for receiving governments, and to optimize the ability of EPA to process more efficiently export notices it receives annually and respond to requests from foreign governments for additional information on chemicals and export notices. For example, on July 21, 1981 (46 FR 37608), in its notice on "Asbestos Export Notification," EPA clarified the reporting responsibilities of persons exporting asbestos or mixtures containing asbestos by defining which types of asbestos require export notification. As another example, on July 27, 1993 (58 FR 40238), in a **Federal Register** document entitled "Export Notification Requirement; Change to Reporting Requirements; Final Rule," EPA issued a rule that changed the current annual notification requirements for exporters of chemical substances and mixtures subject to TSCA section 4 test rules or consent orders to a one-time (instead of annual) export notification per chemical per importing country.

EPA believes that such actions, and today's action, will enhance other governments' ability to thoughtfully consider notices received under TSCA section 12(b) and react appropriately to chemicals being imported by focusing export notifications on a more defined set of chemicals that EPA has identified for regulatory action. As EPA stated in the preamble to the final export

notification rule, "[t]he intended focus of the notice to foreign governments is the chemical substance or mixture and what EPA has done or found out about it. . . ." (45 FR 82844, December 16, 1980). Since the primary purpose of TSCA section 12(b) export notification is to alert and inform other governments of hazards that may be associated with a chemical substance or mixture, it is important that the export notification requirements are implemented in a manner that efficiently conveys EPA's concerns. EPA believes that today's amendment will increase the efficiency of the operation of the section 12(b) requirement as applied to the Cr^{+6} rule by eliminating the current export notifications associated with the export of Cr^{+6} chemicals that cannot be used to treat water.

V. Significant Comments on the Proposed Rule

One commenter requested that EPA expressly mention electroplating and conversion coating products among the examples of products excluded from the TSCA section 12(b) notification requirement. Based on a technical evaluation of this request, in appropriate sections of the preamble of this final rule, EPA is adding electroplating and conversion coating products as examples of products excluded from the export notification requirement because these products containing hexavalent chromium cannot be used to treat water. However, EPA does not intend that the listing of specific examples should exclude any other products that cannot be used to treat water.

A second comment was that EPA revise the definition of "hexavalent chromium-based water treatment chemicals" to encompass only hexavalent chromium "intended" for use in treating water, not that which "can be" so used. EPA considered the option of substituting hexavalent chromium "intended" for use in treating water for the proposed "can be used" in the definition of "hexavalent chromium-based water treatment chemicals," but has decided against such substitution. EPA believes it could be extremely difficult to determine the exporter's intent regarding use of an exported product. It is difficult to determine the "intent" of a manufacturer in exporting a substance or mixture. However, even if the intent of the exporter could be determined as not including water treatment uses, once the substance or mixture is imported into the foreign country, it could be used for a water treatment purpose not withstanding the intent of the exporter. Retaining the "can be used" definition helps to ensure that foreign countries receive notice of the import of substances or mixtures that could be of concern.

Another comment suggested adopting a de minimis and impurity exclusion for the export of section 12(b) substances. EPA currently requires export notification for any section 12(b) substance present in mixtures, excluding articles other than PCB articles, at any concentration and regardless of whether it is intentionally present in the mixture or is present as an impurity. The suggestion made by the commenter is outside the scope of this rulemaking. However, as stated in the preamble to a final amendment made to the export notification rule in the **Federal Register** of July 27, 1993 (58 FR 40238), EPA may examine additional approaches modifying the section 12(b) export notification program in the future.

Finally, one commenter requested that EPA publish a formal 12(b) list in the Code of Federal Regulations (CFR), which would include effective and sunset (termination) dates. Because section 12(b) export notification is required only for substances that are the subject of certain regulatory actions taken under TSCA section 4, 5, 6, or 7, EPA believes the notice associated with publication of these underlying actions in the **Federal Register** is sufficient for purposes of section 12(b). Moreover, the notices initiating these underlying actions generally include a specific discussion of obligations triggered under 12(b). Section 12(b) of TSCA requires no additional rulemaking, separate from the underlying actions, to trigger the export notification requirements. For final rules and orders, effective dates for the 12(b) requirements are the same as the effective dates of the underlying actions. In cases where the proposed actions prompt the section 12(b) export notifications, the requirement to submit export notifications begins 30 days after publication of the proposal in the **Federal Register**. See 40 CFR 707.65(b). Sunset dates (i.e., dates that certain requirements terminate) for purpose of TSCA section 12(b) apply only where the underlying requirement prompting the export notifications are TSCA section 4 or 5(b) actions. As stated in the preamble to the TSCA section 12(b) Export Notification Rule amendments in the **Federal Register** of July 27, 1993 (58 FR 40238), these sunset dates coincide with the expiration of the test data reimbursement period as defined at 40 CFR 790.3. In the near future, EPA plans to issue a **Federal Register** notice listing test data reimbursement period expiration dates for certain TSCA section 4 substances.

As recognized by the commenter, EPA currently makes available an informal list of substances subject to section 12(b) export notification that is updated on or about a quarterly basis. Although inadvertent omission from this section 12(b) list does not excuse non-compliance with the statutory requirements of section 12(b), EPA believes it does serve as a valuable compliance aid. In light of the above, EPA believes that publication of the section 12(b) list in the CFR is not warranted at the present time.

VI. Confidentiality

A person may assert a claim of confidentiality for any information submitted to EPA in connection with this rule. Any claim of confidentiality must accompany the information so claimed when it is submitted to EPA. Persons must mark information claimed as confidential by circling, bracketing, or underlining it, and marking it with "CONFIDENTIAL" or some other appropriate designation. EPA will disclose information subject to a claim of confidentiality only to the extent permitted by section 14 of TSCA and 40 CFR part 2, Subpart B. If a person does not assert a claim of confidentiality for information at the time it is submitted to EPA, EPA may make the information public without further notice to that person.

VII. Economic Impact

In a support document entitled Economic Analysis of the Amendment to the TSCA Section 6 Rule for Hexavalent Chromium, dated April 1994, EPA has evaluated potential changes in costs to the Cr^{+6} rule that would be associated with these amendments. The total savings to industry and EPA associated with this amendment are estimated to be $5,400 to $16,300 per year. EPA's complete economic analysis is available in the public record for this rule (OPPTS-61018).

VIII. Rulemaking Record

EPA has established a record for this rulemaking (docket number OPPTS 61018A). The record includes basic information considered by EPA in developing this rule. EPA has supplemented the record with all written comments and additional information as it was received. In addition to the proposed rule (58 FR 63148, November 30, 1993) and comments received on the proposal, the record now includes the following:

(1) "Prohibitions of Hexavalent Chromium Chemicals in Comfort Cooling Towers; Final Rule," 55 FR 222, January 3, 1990.

(2) Chrome Coalition. re: Petition - Chrome Coalition v. United States Environmental Protection Agency, No. 90–1138, April 17, 1990.

(3) Chrome Coalition. re: Settlement Agreement No. 90–1138, December 15, 1992.

(4) "Asbestos Export Notification." 46 FR 37608, July 21, 1981.

(5) "Export Notification Requirements; Proposed Change to Reporting Requirements." 54 FR 29524, July 12, 1989.

(6) "Chemical Imports and Exports; Notification of Export." 45 FR 82844, December 16, 1980.

(7)"Export Notification Requirement; Change to Reporting Requirements; Final Rule." 58 FR 40238, July 27, 1993.

(8) U.S. EPA OPPTS, EETD. Economic Analysis of Proposed Amendments to the TSCA Section 6 Rule for Hexavalent Chromium, May 1993.

(9) U.S. EPA OPPTS, EETD. Economic Analysis of the Amendment to the TSCA Section 6 Rule for Hexavalent Chromium, April 1994.

(10) U.S. EPA, Burton, D.S. Letter to Collier, Shannon, Rill Scott, February 7, 1994.

(11) U.S. EPA, Telephone communication with General Chemical Corporation, March 17, 1994.

A public version of this record is available for public inspection and copying at the TSCA Nonconfidential Information Center (NCIC), also known as the TSCA Public Docket Office from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. TSCA NCIC is located at EPA headquarters, 401 M St., SW., Rm. NE–B607, Washington, DC 20460.

IX. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866, (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order. Pursuant to the terms of this Executive Order, it has been determined that this rule is not "significant" and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule does not have a significant impact on a substantial number of small businesses. This rule actually decreases the reporting burden for small businesses that export Cr^{+6} chemicals that cannot be used for water treatment, which are currently subject to the reporting requirements of TSCA section 12(b). This rule would not add any economic burden to small businesses. Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA certifies that this rule will not have a significant economic impact on small businesses.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in the Cr^{+6} Rule at 40 CFR part 749, subpart D under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), and has assigned OMB control number 2060–0193 to that collection activity. In addition, OMB has also approved the information collection requirements contained in the Export Notification Rule at 40 CFR part 707, subpart D under the provisions of the Paperwork Reduction Act, and has assigned OMB control number 2070–0030 to that activity.

The changes in this rule are not expected to impact the information collection requirements contained in the Cr^{+6} Rule at 40 CFR part 749, subpart D, and EPA does not expect to change the burden estimates approved by OMB under OMB control number 2060–0193. However, since the rule amends the applicability of the information collection requirements contained in the Export Notification Rule at 40 CFR part 707, subpart D, EPA expects to change the burden estimates approved under OMB control number 2070–0030, and upon the signature of this final rule, will submit an information correction worksheet.

The rule will reduce the number of export notices required from the public by approximately 237 submissions per year. Public reporting burden for the collection of information under 40 CFR part 707, "Chemical Imports and Exports," is estimated to average .5 to 1.5 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Total public reporting burden is expected to decrease as a result of this rule by approximately 119 to 356 hours per year.

List of Subjects in 40 CFR Part 749

Environmental protection, Chemicals, Chromium, Cooling systems, Cooling towers, Export notification, Hazardous substances, Hexavalent chromium-based water treatment chemicals, Imports, Labeling, Recordkeeping and reporting requirements.

Dated: August 12, 1994.

Carol M. Browner,

Administrator.

Therefore, 40 CFR part 749 is amended as follows:

PART 749—[AMENDED]

1. The authority citation for part 749 continues to read as follows:

Authority: 15 U.S.C. 2605 and 2607.

2. In § 749.68, by revising the section heading, paragraphs (a), (b), (c), (d)(10), (d)(11), and (g)(1) to read as follows:

§ 749.68 Hexavalent chromium-based water treatment chemicals in cooling systems.

(a) *Chemicals subject to this section.* Hexavalent chromium-based water treatment chemicals that contain hexavalent chromium, usually in the form of sodium dichromate (CAS No. 10588–01–9), are subject to this section. Other examples of hexavalent chromium compounds that can be used to treat water are: Chromic acid (CAS No. 7738–94–5), chromium trioxide (CAS No. 1333–83–0), dichromic acid (CAS No.13530–68–2), potassium chromate (CAS No. 7789–00–6), potassium dichromate (CAS No. 7778–50–9), sodium chromate (CAS No. 7775–11–3), zinc chromate (CAS No. 13530–65–9), zinc chromate hydroxide (CAS No. 153936–94–6), zinc dichromate (CAS No. 14018–95–2), and zinc potassium chromate (CAS No. 11103–86–9).

(b) *Purpose.* The purpose of this section is to impose certain requirements on activities involving hexavalent chromium-based water

treatment chemicals to prevent unreasonable risks associated with human exposure to air emissions of hexavalent chromium from comfort cooling towers.

(c) *Applicability.* This section is applicable to use of hexavalent chromium-based water treatment chemicals in comfort cooling towers and to distribution in commerce of hexavalent chromium-based water treatment chemicals for use in cooling systems.

(d) * * *

(10) Hexavalent chromium means the oxidation state of chromium with an oxidation number of +6; a coordination number of 4 and tetrahedral geometry.

(11) Hexavalent chromium-based water treatment chemicals means any chemical containing hexavalent chromium which can be used to treat water, either alone or in combination with other chemicals, where the mixture can be used to treat water.

* * * * *

(g) *Labeling.* (1) Each person who distributes in commerce hexavalent chromium-based water treatment chemicals for use in cooling systems after February 20, 1990, shall affix a label or keep affixed an existing label in accordance with this paragraph, to each container of the chemicals. The label shall consist of the following language:

WARNING: This product contains hexavalent chromium. Inhalation of hexavalent chromium air emissions increases the risk of lung cancer. Federal Law prohibits use of this substance in comfort cooling towers, which are towers that are open water recirculation devices and that are dedicated exclusively to, and are an integral part of, heating, ventilation, and air conditioning or refrigeration systems.

* * * * *

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